

AMENDED IN SENATE JUNE 28, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 612

Introduced by Assembly Member Beall
(Coauthors: Assembly Members Ma, Smyth, and Torrico)
(Coauthor: Senator Yee)

February 25, 2009

An act to add Section 3027.3 to the Family Code, relating to custody and visitation.

LEGISLATIVE COUNSEL'S DIGEST

AB 612, as amended, Beall. Custody and visitation: nonscientific theories.

Existing law governs the determination of child custody and visitation with a child in contested proceedings. Existing law provides for the use of court-appointed investigators, as defined, including court-appointed evaluators directed by the court to conduct a child custody investigation in those proceedings. Existing law authorizes the court to appoint a child custody evaluator if the court determines it is in the best interest of the child. If directed by the court, the evaluator is required to file a written confidential report on his or her evaluation. The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report. Existing law requires all child custody evaluators to have completed specified training relating to domestic violence and child abuse. Existing law requires the Judicial Council to adopt standards for court-connected

evaluations, investigations, and assessments related to child custody. Existing law also requires the Judicial Council to formulate rules of court that establish education, experience, and training requirements for child custody evaluators and to establish related forms, as specified.

~~This bill would provide that a child's expression of significant hostility toward a parent may be admitted as possible corroborating evidence that the parent has abused the child. The bill would prohibit a court from concluding that an accusation of child physical or sexual abuse against a parent is false based solely on the child's expression of significant hostility toward the parent. The bill would also require that, on and after January 1, 2010, these provisions be included in all training required of child custody evaluators, and would, consequently, require the Judicial Council to revise training standards for child custody evaluators~~ *allegations of physical or sexual abuse against a child are to be investigated using specified methods of data collection and analysis. The bill would provide that the rules of evidence applicable in criminal proceedings shall apply whenever the court considers an allegation of physical or sexual abuse against a child in a custody proceeding. The bill would also provide that unproven, nonscientific theories, including, but not limited to, alienation theories, as specified, are not consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. The bill would prohibit a court from relying upon an unproven, unscientific theory and from accepting into evidence any finding provided by an expert witness or court appointed professional who has relied on an unproven, nonscientific theory that is a basis for that finding. The bill would require the Judicial Council to provide training consistent with these provisions. The bill would include a statement of legislative intent.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. It is the intent of the Legislature that courts strive*
- 2 *to protect the safety of children by ensuring that abuse allegations*
- 3 *are investigated appropriately and that protecting children from*
- 4 *physical and sexual abuse is the highest priority in custody and*
- 5 *visitation decisions.*
- 6 *SEC. 2. Section 3027.3 is added to the Family Code, to read:*

1 3027.3. (a) Allegations of physical or sexual abuse against a
2 child are to be investigated using methods of data collection and
3 analysis consistent with the requirements of Section 3118, as
4 further clarified in paragraph (2) of subdivision (e) of Rule of
5 Court 5.220, as it read on January 1, 2009.

6 (b) The rules of evidence applicable in criminal proceedings
7 shall apply whenever the court considers an allegation of physical
8 or sexual abuse against a child in a proceeding pursuant to this
9 division.

10 (c) Unproven, nonscientific theories, including, but not limited
11 to, alienation theories that assume that a child's report of physical
12 or sexual abuse by one parent is influenced or fabricated by the
13 other parent, are not consistent with generally accepted clinical,
14 forensic, scientific, diagnostic, or medical standards. The court
15 may not rely upon an unproven, unscientific theory and the court
16 may not accept into evidence any finding provided by an expert
17 witness or court appointed professional who has relied on an
18 unproven, nonscientific theory that is a basis for that finding.

19 (d) Nothing in this section shall limit the consideration of actual
20 evidence, behaviors, statements, or conduct by either parent or by
21 the child.

22 (e) The Judicial Council shall provide training consistent with
23 this section.

24 ~~SECTION 1. It is the intent of the Legislature that courts strive~~
25 ~~to protect the safety and best interest of children in custody matters~~
26 ~~by ensuring that allegations of physical and sexual abuse are~~
27 ~~investigated appropriately or referrals are made to the child welfare~~
28 ~~services agency.~~

29 ~~SEC. 2. Section 3027.3 is added to the Family Code, to read:~~

30 ~~3027.3. (a) A child's expression of significant hostility toward~~
31 ~~a parent may, in the discretion of the court, be admitted as possible~~
32 ~~corroborating evidence that the parent has abused the child. The~~
33 ~~court may not conclude that an accusation of child physical or~~
34 ~~sexual abuse against a parent is false based solely on the child's~~
35 ~~expression of significant hostility toward the parent.~~

36 ~~(b) On and after January 1, 2010, the provisions of this section~~
37 ~~shall be included in all training required pursuant to Section 3110.5.~~